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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted block]

FILE: WAC 03 027 55390 Office: CALIFORNIA SERVICE CENTER Date: APR 09 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[Redacted block]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

[Signature of Robert P. Wiemann]
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a clothing importer and wholesaler that seeks to employ the beneficiary as a market research analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. The petitioner indicated in an October 30, 2002 letter that it wished to hire the beneficiary because she possessed a Bachelor of Arts degree, an associate of arts degree in merchandise marketing, and an MBA degree via long-distance

education. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in marketing for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a master's degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because she has the equivalent of a bachelor's degree in dance from a United States university, and more than five years of work experience that is the equivalent of a bachelor's degree in marketing. Counsel submits two credentials evaluations. In addition, counsel states that the director's finding that the proffered position requires a master's degree is incorrect.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform a specialty occupation that requires a master's degree in economics, business administration, marketing, statistics, or a closely related discipline. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary's foreign degree was determined to be equivalent to a baccalaureate degree from a U.S. college or university in fine arts (dance), which is not a specialty required by the occupation. There was no reference in any of the documentation beyond the initial petition to the beneficiary's MBA from a distance-learning institution, so it is unknown whether it is equivalent to a U.S. degree. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

On appeal, counsel submits an evaluation from the Global Education Group, and one from Globe Language Services, Inc.; both are companies that specialize in evaluating academic credentials. The evaluators concluded that the beneficiary possesses the equivalent of a bachelor's in marketing from an accredited U.S. college or university. However, both evaluations are based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluations carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the two above-referenced evaluations of the beneficiary's education, and a third from Academic and Professional International Evaluations, Inc. One evaluator (Globe Language Services, Inc.) found, "three of [the beneficiary's] five years and two months of progressively advanced work experience and practice in a profession represent the equivalent of one academic year of undergraduate study (approximately 30 semester credits) in the United States." He states that this experience, combined with the beneficiary's degree, is equivalent to "completion of a Bachelor's Degree in Fine Arts with a concentration in Marketing Research." The other evaluator (Global Education Group, Inc.) stated, "[The beneficiary's] education and responsibilities during her over five years of work experience in the field of business/marketing demonstrate both the broad and professional knowledge that would be acquired in four years of academic study towards

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

the award of the U.S. degree of Bachelor of Business Administration in Marketing.” The third evaluator only focused on the beneficiary’s foreign degree and found that it was equivalent to a bachelor of fine arts with a concentration in dance. The record also contains one employment letter, transcripts from the three schools the beneficiary attended, and two diplomas.

Counsel asserts on appeal that the director was incorrect in stating that a master’s degree is required for entry into the market research field, and that a bachelor’s degree would suffice. The AAO does not agree with counsel on this issue. The AAO does agree with counsel that the director misquoted the entry from the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, but that does not change the outcome. The *Handbook* states, “Graduate education is required for many private sector economist and market and survey research jobs.” Counsel asserts that this means that graduate education is optional, rather than required, for market research analyst jobs. Counsel further declares that the *Handbook* states:

Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor degrees usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any number of professional sales jobs. A master’s degree is required to qualify for more responsible research and administrative positions.

Counsel states that the proffered position is an entry-level job, which would only require a bachelor’s degree, according to the *Handbook*. Counsel cannot assert both sides of the issue. On the one hand, he states that the proffered position is a specialty occupation because it is a market research analyst. On the other, he states it is an entry-level position as described in the *Handbook*, which means a position as a research assistant, administrative or management trainee, or marketing interviewer, none of which would be necessarily be considered as specialty occupations.

In this instance, “many” employers require a master’s degree, and the AAO considers this to be an industry standard.

The documentation on record does not establish equivalence to a master’s degree in any of the specific areas required for the specialty occupation. It is unclear why neither of the evaluators considered the beneficiary’s master’s degree. There is nothing in the record to establish that the degree is equivalent to a United States master’s degree. The beneficiary’s other education is equivalent only to a bachelor’s degree, which, as discussed above, is not the degree required for entry into the field.

The AAO now turns to the beneficiary’s prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. There is a very brief statement by the beneficiary’s previous employer regarding her duties. The beneficiary’s resume includes some additional duties. As described by the employer, the beneficiary’s duties did not appear to involve the theoretical and practical application of marketing research. The employer describes the beneficiary’s duties generically; no specificity as to the beneficiary’s daily activities or her level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary’s past work experience included the theoretical and practical application of a body of highly specialized knowledge, which, in this case, is market research analysis. Furthermore, the employer does not indicate that the beneficiary’s work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluators cannot be considered as "recognized authorities." One evaluator from Global Education Group, Inc. is a professor of Decision Sciences and Information Systems. This cannot be considered within the same specialty as the proffered position. The second evaluator did not give any information about his field of specialization. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i) requires the recognized authorities to be from the same or similar specialty.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.